

PETER J. GUTOWSKI
WAYNE D. MEEHAN*
DON P. MURNANE, JR.^Δ
THOMAS M. CANEVARI†
MICHAEL FERNANDEZ*
JOHN F. KARPOUSIS*^Δ
WILLIAM J. PALLAS*
JUSTIN T. NASTRO*
DANIEL J. FITZGERALD*†^Δ
ERIC J. MATHESON*
MICHAEL D. TUCKER*^Δ
WILLIAM H. YOST*
YAAKOV U. ADLER
MICHAEL J. DEHART
MATTHEW J. PALLAY*
J. TANNER HONEA*^Δ
RYAN BYRNES*
BARBARA G. CARNEVALE*
LAINA BORIS*†
BLAINE PAYER
JASON H. KRAMER

* ALSO ADMITTED IN NEW JERSEY
† ALSO ADMITTED IN CONNECTICUT
^Δ ALSO ADMITTED IN WASHINGTON, D.C.
^Δ ALSO ADMITTED IN PENNSYLVANIA
^Δ ALSO ADMITTED IN TEXAS

LAW OFFICES OF
FREEHILL HOGAN & MAHAR LLP
80 PINE STREET
NEW YORK, N.Y. 10005-1759

TELEPHONE (212) 425-1900

FACSIMILE (212) 425-1901

E-MAIL: reception@freehill.com

www.freehill.com

July 8, 2024

NEW JERSEY OFFICE
103 EISENHOWER PARKWAY, SUITE 400
ROSELAND, N.J. 07068
TELEPHONE (973) 623-5514
FACSIMILE (973) 623-3813

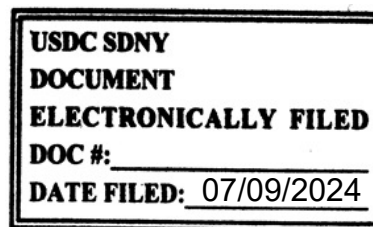
CONNECTICUT OFFICE
246 MARGHERITA LAWN
STRATFORD, CT 06615
TELEPHONE: (203) 921-1913
FACSIMILE (203) 358-8377

OF COUNSEL
MARK F. MULLER
JAMES L. ROSS*
ERIC E. LENCK
THOMAS RUSSO

Our ref.: 15-19/mf

Via ECF

Honorable Robert W. Lehrburger
Magistrate Judge, Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007



**Re: In re Hapag-Lloyd Aktiengesellschaft a/k/a Hapag-Lloyd AG,
as Owners and Operators of the M/V YANTIAN EXPRESS
19-cv-5731 (GHW)(RWL)**

Dear Judge Lehrburger:

We represent Petitioner Hapag-Lloyd AG ("Hapag" or "Petitioner") as owner and operator of the M/V Yantian Express (the "Vessel"), and we are writing to provide Your Honor with an update regarding positive developments concerning settlement discussions and to respectfully request a further adjournment of discovery for ninety (90) days.

The time the Court has allowed the parties thus far to continue settlement discussion has been very productive as more fully described herein.

Settlements to Date

As per the Court's guidance, settlement of the claims presented by Claimant Pepsico/Gatorde and the delayed delivery claims of Claimants MGF and VF Jeanswear/Kontoor have now been finalized.

Agree-to-Recommend Settlements of Cargo Claims

As previously reported, the vast majority of cargo claims asserted in the NY Limitation are held by the Hill Rivkins Claimants,¹ for which the parties have reached an agree-to-recommend

¹ Hill Rivkins represents another 45% of all claims asserted in the NY proceedings (roughly 3,500 claims involving over 1,700 ocean containers).

July 8, 2024
Page 2 of 3

settlement contingent upon the final General Average adjustment to be issued by Richards Hogg Lindley ("RHL").² We have been advised by the RHL that a draft general average adjustment may be ready for review by counsel shortly. As we previously advised, the final figures are important and relevant to the NY Limitation since Claimants seek indemnity from Hapag as to amounts to be paid thereunder. Thus, the settlement of claims asserted in the NY Limitation also take into consideration an agreed to recommend percentage/contribution by Hapag as to amounts due by each Claimant under the final adjustment to be issued by RHL.

In the interim, we have been working with our colleagues at Hill Rivkins to finalize settlement figures for the other two main components of their claims: particular average cargo damage and salvage indemnity. Hill Rivkins counsel advises that the salvage indemnity figures are ready for review by Hapag and its insurers, and the particular average cargo damage claims have been tabulated for review by the undersigned. One additional step that would remain for the particular average claims would be a determination which if any are subject to a \$500 per package limitation under U.S. COGSA. Counsel have agreed in principle that the any settlement percentage for particular average claims would be calculated based on the lower of the COGSA cargo value at intended destination, or \$500 per applicable COGSA package, both as guided by well-established Second Circuit precedent. Counsel hope to be able to resolve all value calculations without court intervention.

Finally, we are pleased to report that we have reached an agree-to-recommend settlement in principal with all of the remaining cargo claimants, except for claims asserted by Nicoletti Hornig & Sweeney and Lennon, Murphy & Phillips, which remain under active review, discussion, and consideration.

Scheduling

Based upon the above, the parties respectfully request a further 90-day extension of the current deadlines as follows:

Court's Case Management Plan (Dkt. 143)(identified by Paragraph number)

- ¶8a - All fact discovery: October 8, 2024
- ¶8c - Requests for production/interrogatories: September 20, 2024
- ¶8d - All fact depositions: October 8, 2024
- ¶8e - Requests to admit: September 20, 2024
- ¶9c - All expert discovery: April 6, 2025
- ¶9d - Meet and confer regarding expert disclosures: September 5, 2024
- ¶12 - Notify court of intent to file summary judgment motion: April 6, 2025
- ¶13 – Submission of Joint Proposed Pre-Trial Order: May 3, 2025, or 30 days after the Court's decision on any summary judgment motions pending at that time.

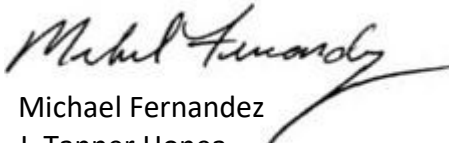
² The final adjustment will set forth amounts due and owing for General Average and salvage by each interest in the General Average community (inclusive of cargo interests in the NY Limitation).

July 8, 2024
Page 3 of 3

This extension would also extend the NVOCCs time to move to dismiss, and, as to those NVOCCs that have not yet answered, to answer or otherwise move, from July 11, 2024 to October 10, 2024.

All parties agree to this request for additional time, or do not object, and we thank Your Honor for your continued consideration and patience in regard to this further request.

Respectfully submitted,


Michael Fernandez
J. Tanner Honea
Michael J. Dehart

Cc: All counsel of record via ECF

SO ORDERED:

07/09/2024 

Hon. Robert W. Lehrburger
United States Magistrate Judge